No. 257

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In the Supreme Court of the United States

OCTOBER TERM, 1969

GENERAL METAL PRODUCTS COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-2) is not yet officially reported. The Board's decision and order (Pet. App. A-9) are reported at 164 NLRB No. 1.

JURISDICTION

The court of appeals entered its decree on April 11, 1969 (Pet. 1). The petition for a writ of certiorari was filed on June 19, 1969. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth at page A-1 of the appendix to the petition.

QUESTION PRESENTED

Whether substantial evidence supports the finding of the National Labor Relations Board that the employer and its agents interfered with, restrained and coerced employees in violation of Section 8(a)(1) of the National Labor Relations Act.

STATEMENT

Early in 1965, General Metal Products Company (hereafter "the Company"), whose main offices are in St. Louis, Missouri, established a branch plant in Humboldt, Tennessee. Frank Warmath, a prominent Humboldt lawyer and businessman, had urged the Company to locate in the town, had negotiated with its management about acquisition of the plant site (in which he had a financial interest), and had consulted with and advised the Company about the opening and development of the plant (J.A. 7a; 63a-65a, 99a-100a).[1]

Sometime during the winter of 1965-1966, the International Association of Machinists and Aerospace Workers, AFL-CIO, began an organizing campaign at the Company's Humboldt plant (J.A. 2a; 47a-48a).

[1] "J.A." refers to the joint appendix to the briefs in the court below. References preceding a semicolon are to the Board's findings; those following are to supporting evidence.

Thereafter, Company officials traveled from St. Louis to Humboldt frequently, meeting with Warmath each time they were in town (J.A. 13a; 65a, 70a-71a). The union campaign was discussed at several of these meetings, and the Company informed Warmath that "they didn't want the Union down there" (J.S. 13a; 67a). Warmath, in turn, assured the Company that he "was very interested in not seeing anything take place" and discussed "who the workers were" (J.A. 13a; 70a-71a, 75a-76a). Warmath also discussed the union campaign and ways to defeat the Union with his business associates, including his law partner (G. Griffin Boyte), his real estate partner (Robert L. White), the manager of the bank of which he was chairman of the board (Annie Lou Cox), and a local grocer and politician (Otis Milligan) (J.A. 12a; 73a-74a).

On January 25, 1966, the Union filed a petition for an election with the Board's regional office. On February 8, officials of the Company, representatives of the Union, and Warmath met there and signed a Stipulation for Certification upon Consent Election, scheduling an election for February 18. (J.A. 2a; 47a-48a, 96a).

On February 10, employee Danny Porter visited the Mayor of Humboldt to complain about an "unreasonable" traffic ticket. The Mayor called Warmath on the telephone and handed the telephone to Porter; Warmath instructed Porter to drop by his office the next day. Porter did so, and Warmath opened the meeting by asking how the Union would fare in the election. When Porter answered that he thought the

Union would win, Warmath responded, "Oh, we don't need a Union out there," adding that the plant had lost money. He then told Porter that he had "fixed" his traffic ticket. As Porter thanked him and started to leave, Warmath said, "Well, I did you a favor. Now, I believe you can do me one." (J.A. 8; 43a-44a.)

In the middle of February, White (Warmath's real estate partner) and Cox (the manager of the bank) telephoned employee Terry Stevens. White told Stevens that he "didn't think the Company was ready for a Union and would appreciate it if [Stevens] would * * * not vote for it." Cox remarked that she had heard the employees were having an election, that she thought the Company was not ready for a union, and that she would like to influence Stevens "in any way she could" not to vote for the Union. (J.A. 9a-10a; 45a-46a.)

Warmath asked Otis Milligan to find out "what [the employees] was wanting." On February 15, Milligan visited employee Cross and told him "they sent him * * * to talk * * * about the Union." Milligan and Cross discussed some of the employees' complaints, and Milligan asked if the employees would be willing to postpone the election until a few months later, when it might be more agreeable to the Company. He explained that "they" were "very concerned" that, if the Union won the election, the Company "might move out, go back to St. Louis or go to some other town." He asked how Cross felt about the Union, but Cross replied that he had not yet made up his mind. Milligan reported this conversation back to Warmath. (J.A. 10a-11a; 34a-35a, 92a-94a.)

The next day, Cox telephoned Cross's home and told Mrs. Cross that she was calling because "they were concerned" about the Union, that "there was a possibility that they would lose the Company if the Union should come out there," and that she would like Mrs. Cross to try to influence her husband against voting for the Union. When Mrs. Cross responded that this was a decision for her husband to make, Cox said, "Well, I would like for Jack to come to my office and talk face to face to me concerning this." Cross decided not to talk to Cox. (J.A. 10a; 36a-37a.)

That same day, employee Vernon Bolin received a message from the plant's administration office to call Warmath's law partner, Boyte. When he did so, Boyte asked Bolin to meet him at his office and "have a little talk." Bolin went to Boyte's office after work, and Boyte opened the conversation by saying, "Vernon, I'll get to the point with you. I'm deeply concerned about this Union out at General Metals." He asked why the men wanted a Union, and Bolin detailed the employees' complaints. Boyte responded, "That still don't mean that we need a Union out there," and proceeded to explain that when another company had moved its Humboldt plant to Texas, "[t]he men lost their cars [and] their homes." Boyte said he wanted to talk to some of the people out at General Metals and that he might want to speak to Bolin again. (J.A. 8a-9a; 48a-49a.)

Also on February 16, Plant Superintendent Raymond Stevens approached employee Billie Ray Williams and asked him what he thought about the Union. Williams complained about the lack of soap in the

washing facilities, and Stevens replied, "Well, a bar of soap every month would be cheaper than paying Union dues and fines for not attending meetings." (J.A. 6a; 46a-47a.)

Finally, Company President Mattick assembled the employees on that day and delivered a speech from a prepared text. He referred to the "decision you'll make on February 18," and said that the issue was "simply this—employee and company can no longer continue to progress on the path that they follow, but now need a witch doctor to help us to continue the forward movement." After discussing the Company's policy of promotion from within the ranks, and pointing out its future growth possibilities, he warned that the employees should not "trod on this opportunity" or "destroy those goals that lie ahead." He further asserted that "a witch doctor * * * cannot supplant cooperation, working and planning together," and that the plant did not need one. Mattick concluded by reminding the employees that their vote would determine "how fast Plant #2 will change from a branch plant to something else * * *." (J.A. 17a; 133a-137a.)

Two days later, the employees rejected the Union by vote of 14 to 8, with 3 challenged ballots (J.A. 2a).

The Board found that the threats of the townspeople concerning the fate of the plant in the event of unionization, the interrogations of employees by Company officials, and the speech by Company President Mattick constituted a pattern of unlawful coercion to prevent the employees from voting for the Union in the election, and thus violated Section 8(a)(1) of the Act. In holding the Company accountable for so

much of the coercive conduct as was committed by Warmath and his associates, the Board relied upon the relationship between him and the newly established plant, Warmath's admission that he had obtained the names of employees from Company, his visits to the plant and presence at the meeting at which the parties agreed to hold a consent election, and, finally, the similarity of the approaches taken by all of the persons involved in the attempt to defeat the union campaign. (Pet. App. A10-A11, A18-A30.) The Board ordered the Company to cease and desist from its unlawful activities and to post appropriate notices. The Board also ordered that the election be set aside and a new one conducted. (Pet. App. A12-A13, A32-A33.) The court of appeals sustained the Board's findings and enforced its order (Pet. App. A2-A8).

ARGUMENT

Petitioner does not challenge the principle that an employer can be held responsible for the activities of others when they are carried on with its knowledge, acquiescence, and approval. Nor does it deny that an employer or its agents may not coercively interrogate employees concerning their union activities, or threaten them with reprisals for engaging in such activities.[2] Its only contention is that the Board erred in

[2] As petitioner points out (Pet. 13), the test set forth in *Bourne* v. *National Labor Relations Board*, 332 F. 2d 47 (C.A. 2), is appropriate to determine whether an employer's interrogation of employees, absent threats, is unlawful. The interrogation engaged in by petitioner in the instant case clearly meets this test. The rest of the conduct involved

finding that it did in fact know, approve, and acquiesce in the activities of Warmath and his associates, and that both it and the townspeople did in fact engage in the activities outlined above. Such evidentiary issues do not warrant further review. In any event, the evidence summarized in the Statement amply supports the Board's findings on these points.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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consists of statements which could properly be found to constitute outright threats of reprisal under the test set forth in *National Labor Relations Board* v. *Gissel Packing Co.*, Nos. 573, 691, 585, decided June 16, 1969, slip op., pp. 40-43.

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